No. 3462

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

In re NG FUNG HO, otherwise known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, otherwise referred to as LOUIE PON; GIN SANG GET and GIN SANG MO,

(On Habeas Corpus),
Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco.

Appellee.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The appellants herein are persons of the Chinese race who have been arrested and ordered deported on warrants of the Secretary of Labor under the provisions of Section 19 of the Immigration Act of February 5, 1917.

Ng Fung Ho, alias Ung Kip, arrived at the Port of San Francisco, July 20, 1915, ex SS Manchuria,

and was admitted as a returning Chinese merchant July 22, 1915, and his alleged Ng Yuen Shew, who accompanied him, was admitted by the Secretary of Labor on appeal December 7, 1915. Both were arrested on warrants issued by the Assistant Secretary of Labor, dated December 20, 1917 (Ex. C pp. 27 and 28), given the hearings required by law and warrants of deportation issued December 21, 1917, (Ex. C pp. 78 and 79).

Lui Yee Lau arrived at the Port of Seattle on the SS. "Yokahama Maru" and was admitted April 15, 1916, as a Section-6 Chinese Merchant. He was arrested on a warrant of the Assistant Secretary of Labor, dated February 16, 1918 (Ex. B pp. 17), given the hearing required by law and ordered deported on the warrant of the Secretary of Labor, dated May 24, 1918 (Ex. B P 51).

Gin Sang Get and Gin Sang Mo, were admitted at the Port of San Francisco, the former August 12, 1916, and the latter May 7, 1917, as the sons of Gin Quon Yuen, a court discharged citizen of the United States. Both were arrested on warrants issued by the Assistant Secretary of Labor dated November 12, 1917 (Ex. A pp. 2 and 3), given the hearings required by law, and ordered deported on warrants issued by the assistant Secretary of Labor, dated February 4, 1918. (Ex. A pp. 18 and 19.)

These cases have twice been before the Lower Court in this District on petitions for writs of Habeas Corpus. They were first before his Honor Judge Dooling, in cases numbered 16342 in re Ng Fung Ho and Ng Yuen Shew; 16344 in re Gin San Get and Gin Sang Mo and 16396 in re Lui Yee Lau, who sustained demurrers to the petitions and denied the writs in June 1918. From said decisions appeals were taken to this court but before the cases were docuted, at the request for Counsel for Appelants, the appeals were, by consent, dismissed and a new petition numbered 16500 was filed in which all five join. This action was taken for the reason that the decision of the Circuit Court of Appeals for the Fifth Circuit, in the case of Lee Wong Hin, 251 Fed. 275, holding that section 19 of the Act of February 5, 1917, was not retrospective had just been reported and it was desired that this point be passed upon by the District Court in these cases.

Under the new petition 16500 the cases were again submitted to his Honor Judge Dooling, a demurrer to the petition was filed and overruled and thereupon a return was filed. The case was finally submitted to his Honor Judge Rudkin on return who denied the petition and dismissed the writ (T. R. p. 28).

It further apears from the Immigration records that in the cases of Ng Fung Ho alias Ung Kip and Ng Yuen Shew that petitions for writs were filed in

the District Court at San Antonio, Texas, and that said applications were denied after hearing on February 6, 1918 (Ex. C p. 82).

ARGUMENT.

This case presents three points for determination by this Court, viz:

FIRST. Does the record show that the hearings accorded the appellants herein, were unfair?

SECOND. Does the record show a manifest abuse of discretion on the part of the Immigration Officials in directing the deportation of Appellants?

THIRD. Has the Secretary of Labor, under Sections 19 and 38 of the Immigration Act of February 5, 1917, and within the limitations stated therein, authority to arrest and deport, on departmental warrant, alien Chinese persons found within the United States in violation of the Chinese Exclusion Law whose entry occurred prior to the date said Immigration Act went into effect (May 1, 1917).

For the sake of convenience we will follow the order adopted in appellants brief and present the third point first.

THIRD POINT.

Has the Secretary of Labor, under Sections 19 and 38 of the Immigration Act of February 5, 1917, and within the limitations stated therein, authority to arrest and deport on departmental warrant alien

Chinese persons found within the United States in violation of the Chinese Exclusion Acts whose entry occurred prior to the date said Act went into effect? (May 1, 1917.)

A comparison of the present Immigration Act of February 5, 1917, with that of the Act of February 20, 1907, which it repealed, and reference to the report of the Senate Committee on Immigration, Number 352, 64th Congress, first session, will be of assistance in determining just what authority Congress intended to, and did, confer, upon the Secretary of Labor under the present Act.

ACT OF FEBRUARY 20, 1907.

Sec. 20: "That any alien *who shall enter* the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States."

Sec. 21: "That in case the Secretary of Labor shall be satisfied that an alien has been found in the United States in violation of this Act, or that an alien is subject to deportation under the provisions of this Act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he

ACT OF FEBRUARY 5, 1917.

Sec. 19: "That at any time within five years after entry any alien WHO SHALL HAVE ENTERED, OR WHO SHALL BE FOUND in the United States in violation of this Act, or in violation of any other law of the United States, * * * shall, upon the warrant of the Secretary of Labor be taken into custody and deported." * * * Provided, further, That the provisions of this section, WITH THE EXCEPTIONS HEREINBEFORE NOTED, shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States." * * * (3rd Proviso)

"Provided further, That any person who shall be arrested under the provisions of this Section on the ground that he has entered or

came, as provided by Section 20 of this Act.''

Sec. 43: ''That the Act of March 3, 1903, * * * and all Acts and parts of Acts inconsistent with this Act are hereby repealed; Provided, that this Act shall not be construed to repeal, alter or amend existing laws relating to the immigration or expulsion of Chinese persons or persons of Chinese decent. * * *

Sec. 28. ''That nothing contained in this Act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing, or matter, civil or criminal, done or existing at the time of the taking effect of this Act; but as to all such prosecutions, suits, actions proceedings, acts, things, or matters, the laws or parts of laws repealed or amended by this Act are hereby continued in force and in effect.''

been found in the United States in violation of any other law thereof, which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other Act. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.'' (5th Proviso.)

Sec. 38: ''This Act, except as otherwise provided in Section 3, shall take effect and be in force on and after May 1, 1917. * * * Provided, That this Act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons, or persons of Chinese descent, EXCEPT AS PROVIDED IN SECTION 19 HEREOF. * * * PROVIDED FURTHER, That nothing contained in this Act shall be construed to affect any prosecution, suit, action or proceedings brought, or any act, thing, or matter, civil or criminal, done or existing at the time of the taking effect of this Act, EXCEPT AS MENTIONED IN THE THIRD PROVISO OF SECTION 19 HEREOF; but as to all such prosecutions, suits, actions, proceedings, acts, things or matters, the laws, or parts of laws, repealed or amended by this Act are hereby continued in force and effect.''

It will be observed that Section 38 of the present Act, corresponds to Sections 43 and 28 of the earlier Act, being the repealing sections of said Acts. Section 38, however, contains two exceptions, to wit: "EXCEPT AS PROVIDED IN SECTION 19 HEREOF," and "EXCEPT AS MENTIONED IN THE THIRD PROVISO OF SECTION 19 HEREOF," which do not appear in Sections 43 and 28 of the earlier Act. Surely these exceptions were intended to have some meaning and some bearing on the sections of the Act in which they appear and to which they refer, and we submit were not placed by Congress in these provisos for any idle purpose, as will be shown by reference to Senate Report hereafter quoted. From the very wording of these exceptions, and the fact that they do not appear in the earlier Act, it is clear that Congress intended they should so modify and restrict the provisos of which they are a part as to exclude from the other provisions of said provisos the classes of aliens enumerated in Section 19, to which said exceptions undoubtedly refer.

Section 19 enumerates the classes of aliens subject to arrest and deportation on warrant of the Secretary of Labor; all the classes so enumerated are included in the third proviso of said Section, to wit: "That the provisions of this Section, with the exceptions hereinbefore noted, shall be appli-

cable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States," without again enumerating them; they are again included in the exception to the first proviso of Section 38, to wit: "Except as provided in Section 19 hereof," without renumeration, and again, in the exception to the second proviso of said Section 38, to wit: "Except as mentioned in the third proviso of Section 19 hereof." Surely these exceptions, although expressed in different language, can have reference to none other than the classes first enumerated in Section 19 and each comprehends within its meaning the classes so enumerated.

This Section, besides enumerating the various classes of aliens subject to arrest and deportation on the warrant of the Secretary of Labor, fixes the time limit, if any, within which, after entry, they may be so arrested and deported. In certain classes the time limit is fixed at three years, others at five years, and in others, there is no time limit set; they, the latter, may be deported at any time after entry.

The Senate Committee, in its report, says: "With *certain* exceptions, the provisions of Section 19 are made retroactive," but fails to state just what these "certain exceptions" are. The language, however, denotes that the words are used in a limited sense and not in a general sense. It refers to, and has

the same meaning as, the exception in the third proviso of Section 19, to wit: "With the exceptions hereinbefore noted."

We submit, therefore, that the exceptions referred to as "noted," in the third proviso of said Section, are *first:* "Any alien who shall have entered or who shall be found in the United States in violation of this Act"; *second:* "Any alien who is *hereafter* sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States"; *third:* "Any alien who is *hereafter* sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry."

As to those who enter in violation of "this Act," the law is of course not retrospective. As to the last two classes just before mentioned, the Act is clearly retrospective with respect to time of entry, but not retrospective with respect to conviction.

It is to these last mentioned three classes to which the exception in the third proviso of Section 19, to wit: "WITH THE EXCEPTIONS HEREINBEFORE NOTED," applies. All the other classes mentioned in said section fall within the scope of the third proviso of said Section, as it would read,

if the exception was omitted, to wit: "That the provisions of this Section * * * shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States." This third proviso indicates an intention that all the provisions of said Section shall be retroactive, except such as contain within themselves an indication of a contrary intent. The expression "with the exceptions hereinbefore noted," could not mean anything else because the exceptions are not set down categorically but are "noted," merely in the broad sense of being self descriptive in that respect.

The wording of Section 19 is such in itself as to indicate very clearly that certain provisions thereof were intended to be construed as retrospective and certain other provisions not so intended. The change in language from "WHO SHALL ENTER" as used in the Act of February 20, 1907, to the language "WHO SHALL *HAVE ENTERED,*" in the Act of February 5, 1917, clearly indicates such an intent. It will be observed that the language, to wit: "WHO SHALL ENTER" is used in the future tense, and the language "WHO SHALL *HAVE ENTERED*" is used in the past perfect tense.

The following is quoted from Senate Committee Report Number 352, 64th Congress, First Session, heretofore referred to.

"SECTION 19—DESCRIPTION."

This is a combination of Sections 20 and 21 of the Act of 1907, with the addition of several classes to the list of aliens whose deportation is prescribed. Such of these additions as are important are mentioned hereinafter; in the main, they correspond to the additions made to the excluded classes in Section 3. To the fullest extent practicable this section has been made to include all the classes subject to deportation after having entered the country; this is accomplished in two ways, first, by enumerating the classes and indicating the period, where any is set, within which deportation must be effected, and, second, by incorporating in this section, in much plainer language, the provisions of Section 20 and 21 of the existing law, which require the deportation of aliens "who shall enter the United States in violation of law" and with respect to him, the Secretary of Labor, "shall be satisfied" that they have been found in the United States "in violation of this Act," or that they are subject to deportation under this Act or "any law of the United States." * * * Its object is to make perfectly clear the intent to continue the practice established when the Act of 1907 was passed of expelling from the United States every alien, who, after having secured admission in one way or another, was found here within the period of limitation fixed and was found to have been at the time of his entry a member of any one of the list of classes enumerated in Section 2 of the said Act, corresponding to Section 3 of this Act; *and also the*

*intent to continue the practice established under that Act, and since approved in a number of court decisions, * * * of expelling aliens who enter or are found here in violation of the Chinese Exclusion Law, adapting the administrative process of the Immigration Act to that class of cases wherever the proceedings are instituted within the period of limitation specified therein.*

The existing law authorizes the deportation of any alien who becomes a public charge, within the specified time limit, from causes existing prior to entry. As H. R. 6060 passed the Senate it changed the latter part of this provision so that it read "from causes not affirmatively shown to have arisen subsequent to landing." The change went out of the measure in conference. It has now been restored by the house committee and accepted by the house. Many cases arise in which it is practically impossible for the Government to carry the burden imposed upon it as the existing law is worded, and the Commissioner General of Immigration and the Secretary of Labor have repeatedly recommended that this change be made.* * *

When the Act was passed as H. R. 6060 it contained a new provision for the deportation of aliens who commit serious crimes within five years after entry, the courts pronouncing sentence being authorized to recommend in any instance that deportations shall not occur. As the Act now stands, the House has added, at the suggestion of its committee, a provision intended to reach the alien who, after entry, shows himself to be a criminal of the

confirmed type, such aliens to be deported without limitation on the length of time after entry when they commit a second serious offense; and there were added on the floor of the House two provisions, the obvious purpose of which, is to allow either a court or the judge thereof a reasonable time after pronouncing sentence upon a convicted alien within which to determine whether he will recommend to the Secretary of Labor that deportation be not effected after the sentence has been served.

With respect to each class, where a limitation of time is placed upon deportation, it has been changed to five years (with the exception of those who merely enter surreptitiously or without inspection), the limitation of existing law being three years. Prostitutes, procurers and other members of the classes inhibited on grounds of sexual immorality, have been subject to deportation without time limitation since the passage of the act of March 26, 1910 (36 Stat. 263); and the propriety of this has been emphatically and distinctly upheld by the Supreme Court (Lapina v. Williams, 232 U. S. 78). This policy is continued and certain other classes, equally undesirable have been included within its scope, to wit: the anarchistic classes; and those who were criminals before they came to this country.

At the suggestion of the Senate Committee there was incorporated in H. R. 6060 a proviso, the necessity for which had been pointed out by the Secretary of Labor and the Attorney General, the purpose of which was to break up the extensive practice under which that despicable class of persons

that deal in women for immoral purposes manage to retain their victims in the United States by having them marry American citizens. This proviso is retained in the present Act with slight improvements in its wording made on the floor of the House.

WITH *CERTAIN* EXCEPTIONS the provisions of the Section are made retroactive, and the section is made consistent with other sections in its application to aliens from the Insular possessions.

The proviso added by the House Committee of the present Congress is a repetition of an amendment to an amendment which was inserted in H. R. 6060 in conference but which, because of the legislative situation of the Act at that time, was awkwardly located in the Section. The language has been materially clarified, the purpose is to make it clear that Chinese arrested under the section on the ground that they *have entered* or been found in this country within the fixed time limit in violation of the Exclusion Laws shall be required, as they are under the Exclusion Laws, to make an affirmative showing in order to escape deportation, and that such persons shall be deported to China, as required by the Exclusion Laws, if the country from which they immediately come places restrictions upon their return thereto, having in mind particularly the fact that Canada will not permit the United States to deport a Chinese into Canadian territory unless upon payment to the Canadian Government of the $500 head tax.

The last proviso, while new in this particular location, is not new in the law, the courts having re-

peatedly held that in cases of aliens arrested for deportation, as well as in the cases of those excluded at our ports, the decision of the administrative officers is final, and the Supreme Court, having in several decisions regarded the case of the alien arrested for deportation as practically a deferred exclusion (the Japanese Immigrant case, 198 U. S. 86; Pearson v. Williams, 202 U. S. 281)."

We submit that an analysis of the law in light of the above report does not permit of any construction other than that contended for by the Government, if the expressed will and intent of Congress is to be given effect and that Congress clearly intended to so frame the present Immigration Act as to overcome the defects and cure the evils in the earlier Act.

It follows, therefore, that "any alien who *shall have entered* or who shall be found in the United States in violation of any other law of the United States," meaning the Chinese Exclusion Laws, "shall at any time within five years after entry," and "irrespective of the time of entry," whether before or since the passage of this Act, "on the warrant of the Secretary of Labor, be taken into custody and deported."

Counsel for petitioners cites the case of Mayo, Immigration Commissioner, Exrel v. U. S., ex rel Lee Wong Hin, 251 Fed. 275 C. C. A. 5th, as sustaining the first point raised by him in the present

case. That opinion, it will be observed, is not unanimous, one of the honorable judges dissenting. The cited case is to be distinguished from the one at bar in this—that the relator, Lee Wong Hin, had heretofore been ordered deported on warrant of the Secretary of Labor issued under the Act of February 20th, 1907, a petition for writ of habeas corpus was denied by the District Court, and on appeal, the judgment of the lower court was reversed "with directions to entertain the petition and to grant the writ, unless the United States, within such time as the District Judge deems reasonable, institutes proceedings against the relator under the provisions of the Chinese Exclusion Act." (240 Fed. 368.) The decision was rendered March 10, 1917 and the present Immigration Act passed February 5, 1917, effective May 1, 1917. Apparently no action was taken to deport relator under the provisions of the Chinese Exclusion Laws, due, no doubt, to the fact that the new Immigration Act, passed about thirty days before the decision was rendered, would become effective in less than two months and before the five year limit had expired.

With due deference to the opinion of the learned judges in the case relied upon by petitioners, it is the Government's contention that the decision is not a correct interpretation of the sections of the Act involved, nor in accord with the expressed in-

tent of Congress as shown by the Act, itself, and Senate Report heretofore quoted, nor when viewed in light of previous decisions on the same subject matter under the Act of February 20, 1907, and the defects and evils found to exist under said Act and sought to be remedied in the present Act.

There was a diversity of opinions in both the District and Circuit Courts on the question of the jurisdiction of the Secretary of Labor under the Act of February 20, 1907 (Sections 20 and 21), to arrest and deport Chinese aliens found in this country in violation of the Chinese Exclusion Acts and the following cases sustain the power of the Secretary of Labor:

Ex parte Woo Shing, 226 Fed. 141, D. C., Sep. 16, 1915.

Lo Pong vs. Dunn, 235 Fed. 510, C. C. A. 8, July 10, 1916.

Sivray vs. U. S., 227 Fed. 1, C. C. A. 3, Nov. 3, 1915.

The power of the Secretary was denied in the following cases:

Ex parte Woo Jan, 228 Fed. 927, D. C., Jan. 22, 1916.

U. S. vs. U. S. Ex rel Lem Hin, 239 Fed. 1023, C. C. A. 7, Jan. 19, 1917.

Lee Wong Hin v. Mayo 240 Fed. 368, C. C. A. 5, Mar. 10, 1917.

The question was finally settled by the Supreme Court, in U. S. vs. Woo Jan, 62 L. Ed. 466, decided January 28, 1918, holding that the Secretary of Labor did not have such jurisdiction because of the provisions of Section 43 of said Act. It will be noted this case was not decided until nearly a year after the present Act was passed (Feb. 5, 1917).

It is clear that Congress, at the time the present Act was under consideration, had in mind the fact that this diversity of opinion existed and sought by the changes made in the new Act, to cure the defects and evils existing in the earlier Act, and it is apparent from an analysis of the sections of the Act under discussion, that that purpose was intended to be, and we submit, has been accomplished.

That resort may be had to the discussion of the subject, to ascertain the intention of Congress in passing an Act, we cite the following:

> "The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature."
> 162 Fed. 331; 170 Fed. 529.
>
> "Resort may be had to the intention of Congress, the object to be secured, and to such extrinsic matters as the circumstances attending its passage and its relation to other laws. Every statute must be construed with reference to the object intended to be accomplished by it."
> 160 Fed. 700; 158 Fed. 931; 162 Fed. 145.

"In order to ascertain this object, it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one," and "If the purpose and well ascertained object of a statute are inconsistent with the precise words, the latter must yield to the controlling influence of the legislative will resulting from the whole Act."
143 Fed. 783.

"The words, phrases and sentences of a statute are to be understood as used, not in any abstract sense, but with due regard to the context, and in that sense which best harmonizes with all the other parts of the statute."
159 Fed. 33; 20 Fed. 524; 200 Fed. 239; 185 Mo. 25-62; 84 S. W. 76; 206 U. S. 226-229; 95 N. Y. 554-559.

It is evident from the briefs filed in the Lee Wong Hin case that the court did not have before it, when considering the matter, Senate Report heretofore quoted, nor does it appear therefrom, that the defects or evils in the old law, which the new Act sought to remedy were before the Court for its consideration. The Court said: "It is difficult to determine just what is meant by the Third Proviso of Section 19; the exception to the last proviso of Section 38 is not more clear. To give the latter the meaning suggested by the Government would be to permit the exception to substantially (if not absolutely) destroy the proviso."

It is the Government's contention in the case at bar that the third proviso of Section 19 comprehends within its meaning all the classes described in said Section and, with the exception of the three classes heretofore mentioned, to wit: "any alien who shall have entered in *violation of this Act,*" "any alien who is *hereafter* sentenced, etc.," and "any alien who is *hereafter* sentenced more than once, etc.," in much more affirmative language than that heretofore used declares, "that the provisions of this Section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States, hence, making the provisions of Section 19 "with certain exceptions" retrospective in their operation, and further contends that the exception to the last proviso of Section 38, to wit: "except as mentioned in the third proviso of Section 19 hereof," is intended to, and does include, all the classes included in the third proviso of said Section, viz., those mentioned in Section 19, and that said exception so modifies and restricts the proviso of which it is a part, as to exempt from the other provisions of said proviso the classes of aliens enumerated in said Section 19.

We submit that the above is the proper and only construction to be given these two exceptions and that to give the meaning contended for to the lat-

ter would not "be to permit the exception to substantially (if not absolutely) destroy the proviso," for the reason that there are many other sections of both the old and the new Act, violations of which are punishable, either by fine, or imprisonment, or both, and which are not affected by the exception, but to which the other provisions of said proviso apply, to wit: a violation of Section 4 is punishable by imprisonment by not more than ten years and by fine of not more than $5000; Section 5 by penalty of $1000 in a civil action or in criminal action for misdemeanor, a fine of not more than $1000, or imprisonment not less than six months nor more than two years; Sections 6 and 7, same as Section 5; Section 8, by fine of not over $2,000 and imprisonment not over five years; Section 10, by fine not less than $200 nor more than $1,000, or one year or both, or a penalty of $1,000 as a lien on ship; Section 16, not over one year, or not over $2,000 fine, or both; Sections 20 and 23, same penalty as Section 8; Section 28, by fine of not more than $5,000 or imprisonment not more than five years, or both, and $1,000 or six months' imprisonment, or both; Section 31, penalty of $5,000 in libel suit; Section 32, $1,000 in libel suit; Section 33, same penalty as 32.

It is only the "things and matters" described in Section 19 "as they existed at the time of the taking effect of the Act," that are excepted from the

other provisions of the second proviso of Section 38 by the exception thereto, but the "things and matters" described in the other sections of said Act, "As they existed at the time of the taking effect of the Act," are not affected by the exception but as to them, the latter, "the laws or parts of laws repealed or amended by this Act are hereby continued in force and effect."

SECOND POINT.

Does the record show a manifest abuse of discretion on the part of the Immigration Officials in directing the deportation of appellants?

Ng Fung Ho alias Ung Kip and Ng Yuen Shew were both arrested on warrants issued by the Assistant Secretary of Labor dated September 20, 1917, wherein it is charged that they have been found in the United States in violation of the Chinese Exclusion Law and setting forth wherein they are subject to deportation (Ex. C pp. 27 and 28).

Both were arraigned under said warrants October 16, 1917, and were permitted to inspect the warrant of arrest and all the evidence on which said warrants were issued, and the aliens notified of their right to be represented by counsel (Ex. C pp. 59 and 55). Said hearings were continued until October 30, 1917, at which time aliens were represented by counsel who was allowed to inspect the warrants

of arrest and all the testimony and evidence forming the immigration record. Counsel was further advised of his right to have witnesses subpoened if he so desired, which right was waived. (Ex. C. pp. 58 and 54). A brief was filed by counsel (Ex. C p. 67) and the record forwarded to the department together with the report of the inspector conducting the hearings under said warrants (Ex. C pp. 51-46), for the action of the Secretary of Labor.

After a careful review and consideration of the evidence the Assistant Secretary, whose memorandum forms a part of the Immigration record (Ex. C pp. 76-73), ordered the aliens deported and warrants of deportation were issued accordingly (Ex. C pp. 78 and 79).

The evidence in this case plainly shows that Ng Fung Ho, alias Ung Kip, at the time of his departure for China was not a merchant within the meaning of the Chinese Exclusion Law, not having been engaged in buying and selling merchandise at a fixed place of business for the space of one year immediately preceding the date of his departure from the United States. On the contrary, the record clearly shows that he was a laborer engaged in the restaurant business in Texas, and had been so for many years prior to his departure for China, and immediately upon his return he again engaged in the same occupation. His re-entry into the United

States was accomplished by fraud and being a laborer he could not re-enter as such, not having a laborer's return certificate required by law. His Son, Ng Yuen Shew, whose right to enter depended upon the mercantile status of his alleged father, was also inadmissible and was also admitted by reason of the fraud perpetrated on his behalf by his alleged father. It would seem that this case falls squarely within the decision of this Court in the case of Ng Leong v. White, 260 Fed., 749.

LUI YEE LAU was arrested on the warrant of the Secretary of Labor, dated February 16, 1918, charging him with being in the United States in violation of the Chinese Exclusion Law, and further charged that he was a person likely to become a public charge at the time of his entry into the United States (Ex. B, p. 17).

He was arraigned under said warrant February 18, 1918, and advised of his right to be represented by counsel. The hearing was postponed until March 4, 1918, at which time alien was represented by counsel, who was allowed to inspect the warrant of arrest and all the evidence on which same was issued and all the testimony taken up to that time. The hearing was concluded on that day, counsel being present during all of said hearing. (Ex. B, pp. 34-26.)

A brief was filed by counsel (Ex. B, p. 43) and

made a part of the record which, together with the report and findings of the examining inspector (Ex. B, p. 37), was forwarded to the Department for the action of the Secretary of Labor.

After a careful review of all the evidence contained in the Immigration record, as set out in the memorandum of the acting Secretary (Ex. B, pp. 48 and 49), the alien was ordered deported and a warrant of deportation issued accordingly (Ex. B, p. 51).

His Honor Judge Dooling, in passing on the case of Lui Yee Lau, June 29, 1918, when the same was before him as number 16,396, held as follows:

> "Petitioner entered this country in April, 1916, as a merchant with a Section 6 certificate. He has never engaged in any mercantile pursuit here and was arrested on a departmental warrant in San Antonio, Texas, being charged *inter alia* with being a laborer unlawfully in this country, in that he had no laborer's certificate.
>
> He was held by the department to be a laborer, that is to say, a gambler, and ordered deported. I have no doubt that a gambler is a laborer within the meaning of the Chinese Exclusion Act. I do not think the mercantile status of petitioner when he entered the country has been successfully challenged. But his entry as a merchant did not authorize his remaining as a gambler.
>
> There being sufficient evidence to sustain the

charge that he was a gambler for some months before his arrest, the demurrer will be sustained, and the petition for a writ denied."

Gin Sang Get and Gin Sang Mo were arrested on warrants issued by the Assistant Secretary of Labor, dated November 12, 1917, charging that they had been found in the United States in violation of the Chinese Exclusion Law, and further, that they entered without inspection by means of false and misleading statements. (Ex. A, pp. 2 and 3.)

Both were arraigned and partial hearings had on said warrants November 23, 1917, at which time they were represented by counsel (Ex. A, pp. 66 and 63). At the request of counsel the hearings were continued from time to time in an effort to locate the alleged father and obtain his testimony, but without success. The hearings were finally concluded January 16, 1918 (Ex. A, pp. 61-53), and the immigration records, together with the inspector's report and findings (Ex. A, pp. 111-109), were forwarded to the department at Washington, D. C., counsel for appellants filing no brief, but submitting the case on the record.

The Assistant Secretary of Labor, after a careful review and consideration of all the evidence as appears from his memorandum, ordered the aliens' deportation (Ex. A, pp. 116-114), and warrants of deportation were issued accordingly (Ex. A, pp. 118 and 119).

We believe and confidently urge that an inspection of the immigration records in these cases will convince the Court that appellants are unlawfully in the United States as charged, and that the evidence fully supports the findings and conclusions of the Immigration Officials and the orders of deportation made therein.

FIRST POINT.

Does the record show that the hearings accorded the appellants herein were unfair? We submit that the immigration records in these cases disclose no unfairness, but on the contrary that the aliens were accorded every opportunity of presenting any and all evidence in support of their right to be and remain in the United States; that they were represented by counsel, and that none of the rights to which they are entitled under the law or the rules and regulations promulgated by the Department of Labor for conducting such hearings was denied them.

We submit without further argument that the judgment of the lower Court in dismissing the writ of Habeas Corpus in this case should be affirmed.

Respectfully submitted,

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